

AN EXAMINATION OF THE COMMUNITY FISHERIES SUB-DECREE IN CAMBODIA: CHANGES AND DEVELOPMENTS DURING THE DRAFTING PROCESS

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ACRONYMS

| | |
|--------|--|
| CFDO | Community Fisheries Development Office |
| DoF | Department of Fisheries |
| FACT | Fisheries Action Coalition Team |
| INGO | International Non-governmental Organization |
| IO | International Organization |
| MAFF | Ministry of Agriculture, Forestry and Fisheries |
| MRC | Mekong River Commission |
| NGO | Non-governmental Organization |
| OBSES | Economic, Social and Cultural Observation Unit |
| STREAM | Support to Regional Aquatic Resources Management |
| VSO | Voluntary Service Overseas |

ABSTRACT

This study examines the development of the Community Fisheries Sub-Decree. From its promulgation in late 2000 through its draft form in June 2002¹, this sub-decree has gone through over 25 drafts. Initially, the writing process involved the public intimately: community meetings were conducted, NGOs contributed their knowledge and expertise, and then, with these consultations in mind, the newly-formed Community Fisheries Development Office (CFDO) in the Department of Fisheries (DoF) drafted the sub-decree.

Over the following year and a half, the sub-decree went through numerous changes, some of which fundamentally alter the tenor of the legislation. This includes the deletion of some of the primary issues of rural communities, such as what fishing gears they can use and whether they can participate in patrolling the fishing area. While the final form is still pending, there are many questions as to the positive effects that the sub-decree will ultimately have on people's livelihoods when it is finally approved.

This research² was undertaken to track the development of the sub-decree to gain a better understanding of how the Cambodian policy-making system functions. Consultations were undertaken with the DoF and CFDO before the research began, both of which agreed to the study. It is hoped that this report will help not only those interested in community fisheries issues, but also those who want to advocate on other Cambodian development issues as well.

Due to the sensitive nature of the subject material, and the fact that the sub-decree is still pending, the author has conducted interviews with the express purpose of keeping them confidential. Therefore, no individual will be quoted directly in this study. In addition, many of the English versions of the drafts examined were unofficial translations. The author has made no effort to correct the English in the drafts. Moreover, there are also questions regarding the drafts and their sequence, as no government records were kept of the process or the changes that were made along the way. These have been compiled after the fact.

¹ This report charts progress up to June 2002; as of November 2003 the sub-decree remains in draft form.

² See Appendix B List of Interviewees, and Appendix C Primary Documents Consulted.

1. BACKGROUND

Mien tock, mien trey – Where there is water, there is fish

This Cambodian proverb testifies to the crucial role of fisheries in the livelihoods of Cambodians. While the fisheries sector of the Cambodian economy has not garnered the same attention as the forestry sector, it is arguably more vital to the sustainability of the country and to the livelihoods of its people. Fishing is an integral part of the daily lives of millions of Cambodians. It plays a critical role in supplementing diets, providing income and creating employment. In one study that covered eight provinces and 60% of the country's population, 39% of those questioned stated that they were involved in fishing – for 24%, it was their only source of food and income (Ahmed et al., 1998).

The same study noted that fish accounts for up to 75% of the animal protein consumption of Cambodians. Furthermore, farmers often fish during the off-season and/or use rice paddy fishing to supplement their diets. Without this alternative for food and income, many families would not have the resources to survive. It is no surprise, therefore, that some of those interviewed for this research described the fisheries resource as “an essential safety net”.

It is also important to recognize that while agricultural land is usually privately owned, fisheries resources are a public resource for all Cambodians. As Tana (1990) notes, “... all permanent and temporary water bodies, including flooded forest types, [are considered] as the fisheries domain and within the fisheries domain, all living animals and vegetation able to reproduce are considered the property of the State.” In addition to fisheries being in the public domain, the entry barriers for poor rural communities to this livelihood are low, as no land and little capital are needed to fish.

At the national level, several studies have investigated the total fish catch in Cambodia. Official government statistics are unreliable as they are based on estimates from provinces considered to produce commercial quantities of inland fish (Gum, 2000), whereas a larger component of the total catch is comprised of small-scale family fishing. In other words, the figures for fish caught and consumed by the majority of Cambodians are unreported. When these figures are added, total fish catch reaches almost 400,000 tons by the best estimates (Degen et al., 2002). This catch has a landed value of US\$ 100-200 million and a market value of perhaps US\$ 500 million (Degen et al., 2002). With these figures to go by, it is estimated that Cambodia's inland fisheries is the fourth largest, and has the greatest impact on the people of any country in the world (FACT, undated).

1.1 Sustainability and the Environment

The population of Cambodia is growing rapidly, adding about 300,000 people to the workforce annually. The increased population is one explanation for the apparent decline in the fisheries. With a larger population to feed, fisheries resources exploitation is on the increase.

Coupled with the increased use of pesticides in agriculture, the conversion of inundated forests (crucial to the spawning of the myriad species of fish in the Mekong River Basin) into rice fields, and illegal fishing, the fisheries resource may be in trouble. For example, Van Zalinge et al. (2000) have discovered a decline in the numbers of high value species. Those species that require more than one year to reproduce are disappearing from Cambodia's waters as the fishing depletes their stocks. The smaller, lower value species that can reproduce in less than one year appear to be filling the gap somewhat. However, this decline in high value species translates into a loss of income for many. Furthermore, there is a need to focus on management of the entire system, as the water flows and fish catch in one part of the country affect fisheries throughout the land.

1.2 Fishing System in Cambodia

The modern history of fisheries in Cambodia can be traced back to colonial rule, when the French introduced the fishing lot system to regulate the industry and to raise revenue (Degen et al., 2000). This system remained in place until the Khmer Rouge came to power in 1975, which essentially discontinued fishing in favor of rice production. Following the overthrow of the Khmer Rouge in 1979, the Vietnamese installed a system of solidarity groups (collectives) to work under the control of the state, with villages working together to exploit the resource and provide fish for the people and country.

In 1987, the Fiat Law was passed. With a focus on generating much-needed revenue for the government, the new law abolished the state-controlled fisheries collectives system and reintroduced fishing lots (Ly et al., 1999). The Fiat Law divides the fisheries into three categories: commercial-scale, middle-scale, and family-scale (or small-scale). Each of these categories has specific regulations about the types and size of fishing gears that can be used and when they can be used.

Under the Fiat Law, the best fishing grounds are auctioned off as what is called a 'fishing lot' to commercial-scale operators. The winner of the auction is granted sole rights to fish in that area for two years, although the government specifies a closed season in which no fishing may be done to allow the fish to spawn. Several of the interviewees criticized the auction process for not being transparent. And although lot operators must follow fishing regulations, recent history demonstrates that they are often disregarded. This has led to many serious conflicts with villagers. Middle-scale fishing allows for the use of medium-size fishing gear, but also requires approval from fisheries officials and for licensing fees to be paid to the government.

As the name implies, family-scale (or small-scale) fishing is intended to supply families with fish for their own subsistence purposes. Family-scale fishing is not licensed and family-scale fishing gear can be used all year round throughout the fisheries domain (except in 15 sanctuaries). It is important to emphasize that this includes inside commercial fishing lots – in special areas designated as 'set aside' for people during the open season, but throughout the commercial-fishing lots during the closed season. However, this provision has brought 'family-scale' fishers into conflict with commercial lot operators, who, in spite of the law, prevent subsistence fishers from accessing the resource through intimidation, violence and false imprisonment.

In addition, there is some debate about the definition of 'subsistence' as this is not clear in the current law. Is it restricted, for example, to what a family can eat, or does it include the possibility of selling some of the catch to supply income to purchase other necessities? This is an important question, especially regarding the sub-decree and people's ability to earn a sufficient livelihood. There is also some debate about definitions surrounding the size of fishing gear. This has not been revisited since the original law was passed, and there is pressure now from many people who claim that the limitations on family-scale fishing gear do not allow them to make a living or feed their families. It is claimed that these restrictions force many people to use illegal fish catching methods to feed their families.

1.3 Conflicts

The current fishing system has led to many conflicts over fisheries resources, primarily between lot operators and villagers. According to a Fisheries Action Coalition Team (FACT) report, these conflicts arise when there is competition for the same resource. For example, although the lot system sets aside fisheries for use by family-scale fishers, lot operators (often with the backing of armed guards or the military) prevent villagers from accessing the resource. Another major factor involved in the conflicts has been the military (Degen and Thouk, 1998; Swift, 1997), which are reported to sell or lease fishing lots to people in exchange for protection.

The lack of capacity within the Cambodian government (in particular the DoF) to enforce the law has perpetuated these illegal practices.

In summary, the need for the government to generate revenue, corruption and lax law enforcement, combine to create a bleak situation for those fishers living in or near fishing lots. As Mansfield and MacLeod (2002) note, “Ordinary citizens have little recourse to the judiciary and the rights guaranteed by the Constitution are neutralized by fear created by powerful figures.” Alongside this perception, there is the added problem of a lack of trust between the government and people. Several interviewees noted this problem, adding that any reforms will be difficult for the government to implement.

1.4 Illegal Fishing

Illegal fishing is pervasive in Cambodia, from fishing lot operators through to family-scale fishers. Fishing lot operators are reported to use illegal fishing methods to maximize their catch and hence their profit (Swift, 1997; interviews). With a limited timeframe to fish the lot, there may be little incentive to ensure the sustainability of the resource. Lots are often sub-leased to others. Likewise, these fishers may feel no hesitation in taking what they can. Moreover, as noted above, there is little enforcement of the law.

Lacking access to the resource, or simply seeking to exploit the fisheries resource, family-scale fishers also resort to illegal methods such as electro-fishing. These methods allow the violator to quickly maximize the catch and leave the area before the authorities arrive. While this may lead to a larger catch, it is indiscriminate in what it kills and is extremely harmful to the eco-system and environment.

1.5 Fisheries Reform

In October 2000, Prime Minister Hun Sen unleashed a wave of reforms in the fisheries sector. Under pressure from the people, the Prime Minister decided to release large sections of the fishing lots and give control of these areas back to the people. The fishing disputes had reached the attention of the national government and studies were then conducted, but it appears that it was not until letters were written to the Prime Minister and public demonstrations occurred that notice was taken.

Subsequently, a series of sub-decrees were passed that resulted in the release of about 56% of the fishing lot areas back to communities (DoF, 2001). This included all the small lots whose value was less than 30 million Riel (about US\$ 7,700). Each province was dealt with separately, so some saw greater reductions than others. The Prime Minister also eliminated the tax on middle-scale fishing gear through an Administrative Order issued by the Ministry of Agriculture, Forestry and Fisheries (MAFF). While the reforms were welcomed, it appears that many of the areas released were not those that were the most productive, including much land that is flooded forest (Mansfield and MacLeod, 2002).

In addition to the releasing of the lots, the Prime Minister directed the government to come up with a new fisheries management plan that empowered people to manage the fisheries resource. This provided the impetus for the preparation of the first draft of the Community Fisheries Sub-Decree. Initially, the reform process was marked by confusion. While some villagers were able to access the newly-released fishing grounds, most were unaware of the details, especially the new boundaries (DoF, 2001; FACT, undated). In addition, the Director of the Fisheries Department, Ly Kim Han, was promoted to the MAFF (and a few months later he became a Senator) and was replaced by the then Deputy Director, Nao Thuok.

The withdrawal of provincial fisheries officials created a vacuum in enforcement. Since there was no longer anyone in the field to patrol and regulate the fishing areas, there was considerable chaos. Many have characterized this period as one of confusion (DoF, 2001; FACT, undated; Thay, 2002). Lot

operators fished with impunity, villagers caught what they could, and anyone else with an interest in profiting from fishing also tried their hands at the business. The advantage lay with rich people, who could afford to fish with more gear than they either acquired or possessed already. Provincial fisheries officials remained away from the field for about four months; hence the damage to the fisheries stock and the environment was significant.

1.6 Community Fisheries

Meanwhile, rather than waiting for the new law or sub-decree, some communities began to establish Community Fisheries, usually with support from INGOs, IOs and local community groups which existed prior to the reforms. The number of Community Fisheries in operation in Cambodia has since expanded to at least 162 (June 2002), representing over 300,000 people and covering some 230,000 hectare (McKenney and Prom, 2002).

The reforms encouraged the DoF to assist rural communities to establish and maintain Community Fisheries. In particular, the Community Fisheries Development Office (CFDO) was established to provide technical assistance on socio-economic and community development issues. From the beginning, there was little expertise and a lack of funding. Assistance came from the Mekong River Commission (MRC), STREAM and Voluntary Service Overseas (VSO), and the CFDO slowly became functional. However, there was still a tremendous lack of knowledge and experience concerning community development in this sector. After a couple of months, Ly Vuthy was named the head of the CFDO. This office was given the responsibility to write the new sub-decree.

1.7 Legal System in Cambodia

Essentially, sub-decrees are written to examine in detail an issue that is only summarized in the law. In the context of the fisheries sector, the new Fisheries Law (though now only in a draft form) provides the DoF with the legal authority to establish Community Fisheries to manage the common property resource. Thus, a sub-decree must be developed and passed, which describes the Community Fisheries and details the rules and regulations.

At the top of the Cambodian legal structure, laws are passed by the National Assembly and signed by the King, a process that can be both complicated and time-consuming. Sub-decrees, on the other hand, do not have to go through the National Assembly to be passed. After a sub-decree is written, it goes through an approval process from the bottom up:

- After the sub-decree is cleared at the department level, it is sent to the appropriate Ministry for comments and revisions.
- After the Ministry approves the sub-decree, it is sent to the Council of Ministers, which is comprised of the Ministers of State.
- The Council of Ministers consult an internal body, the Economic, Social and Cultural Observation Unit (OBSES), which reviews all legislation that comes before the Council.
- OBSES examine the draft sub-decree and write a comprehensive report.
- The report is passed to the Council of Ministers, which debate the merits of the sub-decree and decides whether to approve or reject it.
- If the sub-decree is approved, the Prime Minister signs it. If the sub-decree is rejected, it is sent back to the Ministry and/or department for revisions and corrections.

Since the National Assembly does not pass the sub-decree, it obviously does not carry the same weight as a law. However, sub-decrees are important and have more power than ministerial declarations because they have been approved by the Council of Ministers.

Chapter 12 of the draft new Fisheries Law deals with Community Fisheries. The first article, Article 76, gives people the right to form a Community Fisheries organization. It states that “all Cambodian citizens” have the right within their own area to take part in the “management, conservation, development and use of the fishery resources ...” Article 77 prohibits the Community Fishery from selling, leasing, donating or transferring the fishing grounds. It also states that only small-scale fishing gear, as determined by a MAFF proclamation, may be used.

There have been several suggestions as to why a sub-decree is being written for Community Fisheries, especially in light of the fact that the new Fisheries Law has not yet been passed and signed. At the moment, the government is working on a new Fisheries Law to replace the Fiat Law of 1987, which is designed to provide “a framework for the management, protection, conservation ... of fisheries to ensure sustainability of the fishery resource.”

There is no mention of the rights of communities to manage or co-manage the fisheries resource in the Fiat Law, thus can a sub-decree come into force before the legislation authorizing it is passed? This question is unresolved, but the author’s understanding of the legal system suggests that there are serious questions about the process. One suggestion by the Council of Ministers has been to write a Royal Decree to authorize the sub-decree, but the Cambodian Constitution does not seem to support this idea.

However, many in the government and several NGOs believe that a sub-decree is needed to give some recognition and legitimacy to communities and to provide a comprehensive framework for fisheries management (Degen et al., 2002; interviews). The DoF see the issue as critical, believing that something is needed now to provide direction and legal force. Without a sub-decree, they argue, nobody will respect the directives of the government to give communities greater control over the fisheries resource. It is feared that, as has been the case since the reforms of the fisheries sector began, chaos and confusion will prevail and that some of those who are in powerful positions may continue to act with impunity in lieu of any regulations, maximizing profits from fishing in areas that were released to communities.

1.8 Drafting Process

Drafting of the sub-decree has been on-going for more than one-and-a-half years (Figure 1). This paper attempts to delineate the key issues and how the language in the drafts changed over time. A chronology of major changes between each draft appears in Appendix A.

The drafting process expanded with the sub-decree being submitted to MAFF, following which the sub-decree has gone back and forth between the DoF and Ministry. It has also been reviewed by the Council of Ministers, who rejected it and returned it for more work.

An initial draft of the sub-decree was developed by the CFDO in December 2000. The DoF Director, Nao Thuok, had the opportunity to input his ideas and comments at this time. In early January 2001, the process was opened up to the public, with the DoF seeking comment from NGOs and members of communities. Moreover, the drafts were taken into the field by both NGOs and the DoF for comment and consultation. Village meetings were conducted in areas around the Tonle Sap (Great Lake), Kratie, Kampot and Sihanoukville, representing lake, river and coastal areas of Cambodia. These consultations lasted for about one month.

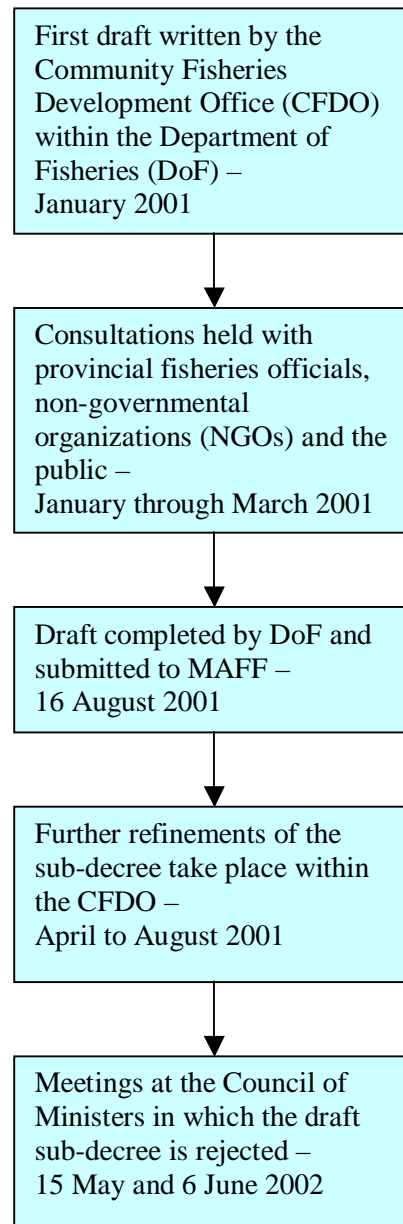


Figure 1 The Drafting Process (until June 2002)

In Phnom Penh, the DoF held a two-day workshop with provincial officials, while NGOs conducted their own workshop with representatives from provinces. Upon completion, the DoF and NGOs met at a third workshop to compare findings and discuss relevant issues. Attending this workshop were selected NGO representatives from rural communities and the DoF committee. However, no government officials from the provinces were present. The workshop was somewhat contentious, with each group failing to agree upon two or three articles. There was essentially an impasse. A follow-up workshop was organized, but again there was no agreement over the contested articles. Through several revisions, a draft sub-decree was finally written to the satisfaction of the DoF and NGOs in August 2001. According to one interviewee, this was a draft sub-decree that “everybody liked”. This version of the draft sub-decree was sent to MAFF in August 2001 for review.

Although opening the process to public consultation went hand-in-hand with the notion of giving more control to people in communities, some have described these developments as “revolutionary”. For the first time, people were given an opportunity to input their opinions and ideas directly into the system before the government decided on the issue. The effect this has had and may continue to have on the Cambodian government, bureaucracy and people should not be underestimated.

1.9 Drafting Process Part 2

With the draft sub-decree in the hands of MAFF, the work of the NGOs and community representatives was basically finished. From August 2001, the process focused on the revision of the draft sub-decree within government. Committees at MAFF examined the sub-decree and sent it back to the DoF for revision on many occasions over a period of several months. Some of the issues revolved around technicalities and legal issues. MAFF ensured that a lawyer examined the sub-decree to check that the articles were in accordance with the Cambodian Constitution, laws and other regulations or sub-decrees. The lawyer was also sent to work with the DoF sub-decree drafting team for about ten days in January-February 2002.

In March 2002, a series of meetings were held within MAFF to work on the sub-decree under the auspices of the new Minister, Chan Sarun. He was the third new minister to be appointed since the sub-decree was first drafted in December 2000. Hence there has been some inconsistency at this high level, since each Minister had different perceptions and conceptions about the purpose and content of the sub-decree as it has worked its way through MAFF. The first meeting with the Minister took place on 5 March 2001, at which he complained that the draft sub-decree was “not smooth” and sent the lawyer back to the DoF to work with the drafting team. The revised draft was completed and presented at the next meeting which was held on 14 March 2001. By the end of March 2001, MAFF had completed all the changes, additions and deletions that they felt were necessary before submitting it to the Council of Ministers. At this point in the process, the head of the CFDO resigned to be replaced by Thay Somony. Again, this may have led to some inconsistency due to different perceptions and conceptions about the purpose and content of the sub-decree, within the CFDO.

Many interviewees complained that they had little input into or even knowledge of the process while MAFF revised the sub-decree. A key criticism of the process by both NGOs and some people in the DoF has been that MAFF looked at technical issues associated with the resource but ignored social and economic issues associated with rural communities. In other words, it is claimed that the sub-decree was revised to reflect existing laws and regulations, however outdated they may be, rather than to promote community involvement in natural resources management. Another interviewee suggested that politics might have played a role in the process, as some other Ministers previewed the draft sub-decree before it was approved by MAFF and could have offered comments during the revisions stage.

1.10 Council of Ministers

The first Council of Ministers meeting that dealt with the draft sub-decree took place on 15 May 2002. The Inter-Ministerial Council discussed the draft sub-decree, which they rejected, noting that it was not compatible with previous laws and that it would give “too much government control over Community Fisheries.”

A second Council of Ministers meeting was held on 6 June 2002. In a letter dated 12 June 2002, the Council of Ministers outlined their objections to the draft sub-decree. Following this rejection, the draft was returned to MAFF and DoF to accommodate these changes in a revised draft sub-decree. As with the process in MAFF, many interviewees complained that they had little knowledge of how the sub-decree was progressing at the Council of Ministers or even what changes had been made or recommended.

2. Drafts and Key Issues

2.1 First Draft Outline

The ‘initial draft’ of the sub-decree, an internal working document from the CFDO, is dated 2 January 2001 and titled “Sub-Decree on Community Fisheries Management”. However, many of the ideas contained in this document were changed before the ‘first draft’ of the sub-decree appeared on 5 January 2001. This ‘first draft’ is the one that was disseminated to the public for comment and consultation, and hence forms the basis for the following discussion and analysis.

Referencing previous legislation, the sub-decree begins with a list of relevant antecedents on which this sub-decree would be legally based. For example, the Constitution is referred to, as are the Fiat Law No. 33 of 1987 and Sub-Decree No. 97 on the removal of the fishing lots.

Chapter 1 outlines the significance of the sub-decree. *Article 1* lists the purposes of this sub-decree, which are to “effectively implement the policies of the Royal Government; make the people of Cambodia recognize the importance of fisheries resources; provide the legal framework for the establishment of Community Fisheries; provide legal rights for persons to participate in the management, conservation, development and sustainable use of fisheries resources; [and] improve the livelihood of the people of Cambodia.” *Article 2* states that the sub-decree will “permit the establishment of Community Fisheries in the Kingdom of Cambodia.” The same article goes on to define Community Fisheries as “a group of Cambodian people who agree to cooperate in order to establish a local organization with the objective to manage, conserve, develop and sustainably use fisheries resources.”

Chapter 2 lays out the “Organization, Management and Role of Community Fisheries”. *Article 3* shows the tenor of the DoF in giving control to the communities. It states that, “The area managed by Community Fisheries must be managed with the cooperation of fisheries institutions, concerned institutions and local authorities.” In other words, the government does not intend to cede full power to communities – the relationship is one of co-management. *Article 4* develops the ‘basic principles’ of Community Fisheries. Among these are provisions which state that, “All Cambodian people who live in and close to fishing grounds have the right to participate in the establishment of a Community Fisheries in their local area ...” This article also proscribes that a committee is necessary for management, selected by “free, direct and fair elections”. The Community Fisheries will then have the responsibility of working with government institutions to establish their own regulations. *Article 5* delineates the roles of the Community Fisheries. The Community Fisheries must implement their regulations and “make plans of management for the conservation and development”, with the assistance of government agencies and non-governmental organizations. Furthermore, they are required to make regular reports on their activities and to work with the government and local authorities to resolve any disputes that may arise.

Article 6 iterates that the budget for the Community Fisheries would comprise contributions from members of the community, grants, government funding, loans, charity and “other income of the Community Fisheries”. While it is stated where the money is to come from, there is no breakdown of what percentage will come from what source, how much money might be needed, and whether or not these funding sources will be adequate. These questions have been raised by some people outside government but remain largely unanswered.

Chapter 3 discusses the rights of the Community Fisheries, one of the more contentious areas in the proposal. The following two articles are crucial points of debate and will have perhaps the greatest impact on the value of the sub-decree to rural communities. *Article 7* denotes that ‘family-scale fishing’ will be determined by the regulations of the Community Fisheries. The issue of family-scale fishing will be brought up again as the drafts progress. The other rights are similar to the roles

expressed in *Article 5*. However, one important provision is added, which gives the Community Fisheries the right to, “When necessary and following laws, temporarily arrest the violators and confiscate illegal equipment in the fishing area that is managed by the Community Fisheries and immediately send to the nearest fisheries official in order to process following the law.” This question of the rights of the community to help police the fishing grounds is important and another issue of intense debate. *Article 8* states that, “Community Fisheries do not have the right to sell, rent, change, donate, share, divide or transfer the management rights to another party.”

Chapter 4 defines the roles of the “Responsible Institutions”, or those that will play an integral role in the establishment and development of the Community Fisheries. *Article 12*, the first one of relevance, allocates to the DoF the responsibilities of providing guidelines to communities, facilitating the process of establishing and managing these groups, aiding in efforts to protect the fisheries, disseminating government policies, training locals to build capacity, and monitoring the functioning of the Community Fisheries. In other words, the DoF is given the primary role of overseeing the implementation and running of the Community Fisheries. The issue of training and education will also be a key duty, as many perceive that communities have low capacities to form and maintain such a complex undertaking. Likewise, local authorities are given the role of assisting communities and the DoF to ensure that all laws and regulations are enforced and implemented.

Chapter 5 establishes the relationship between fishing communities and technical institutions. It defines what is required from the Community Fisheries organizations to be valid, such as a list of names of committee members, a map of the fishing area and a management plan. *Article 18* gives MAFF the authority to terminate the relationship if there are “sufficient reasons”.

Chapter 6 deals briefly with punishments. *Article 19* simply states that, “The persons that violate this sub-decree must be punished according to the law.”

Chapter 7 describes technical aspects of passing and implementing the sub-decree.

This draft formed the basis for consultation and discussion inside and outside the DoF. It is important to note the content of this draft, and that the CFDO worked on this document with little knowledge of Community Fisheries or how best to work it into the Cambodian legal system. Many of the ideas in the first draft sub-decree were the work of dedicated individuals who advocated giving rights and authority to rural communities. The aim was to empower local communities so that they had a stake in the management and conservation of the public resources that they depend on to sustain their livelihoods. Several people in the DoF have acknowledged today that the concept is still new, and that they are still learning what to do and how best to implement this form of natural resources management in Cambodia.

2.2 Key Issues of the Sub-Decree

Several important issues have been debated throughout the drafting process. Many people in the DoF and NGOs agree on the need to empower rural communities, if this ‘pro-poor’ strategy is to have real impact on people’s livelihoods. Unfortunately, the format of the current draft sub-decree has seemingly weakened the provisions that would have really empowered communities. Among these issues are:

- The question of ‘family-scale fishing’
- The idea of enforcement and stopping illegal fishers
- The rights of migrants, and
- The treatment of ethnic minority groups.

2.3 Subsistence and Family-scale Fishing

A crucial component of the sub-decree deals with the category of ‘family-scale fishing’. As noted above, this category specifies small fishing gears that many argue are insufficient to ensure a sustainable livelihood for fisherfolk. By tracing the development of this issue through the drafting process, it is possible to gain a better understanding of who advocated for the rights of fisherfolk and where this pro-poor position was then changed in the sub-decree (Figure 2).

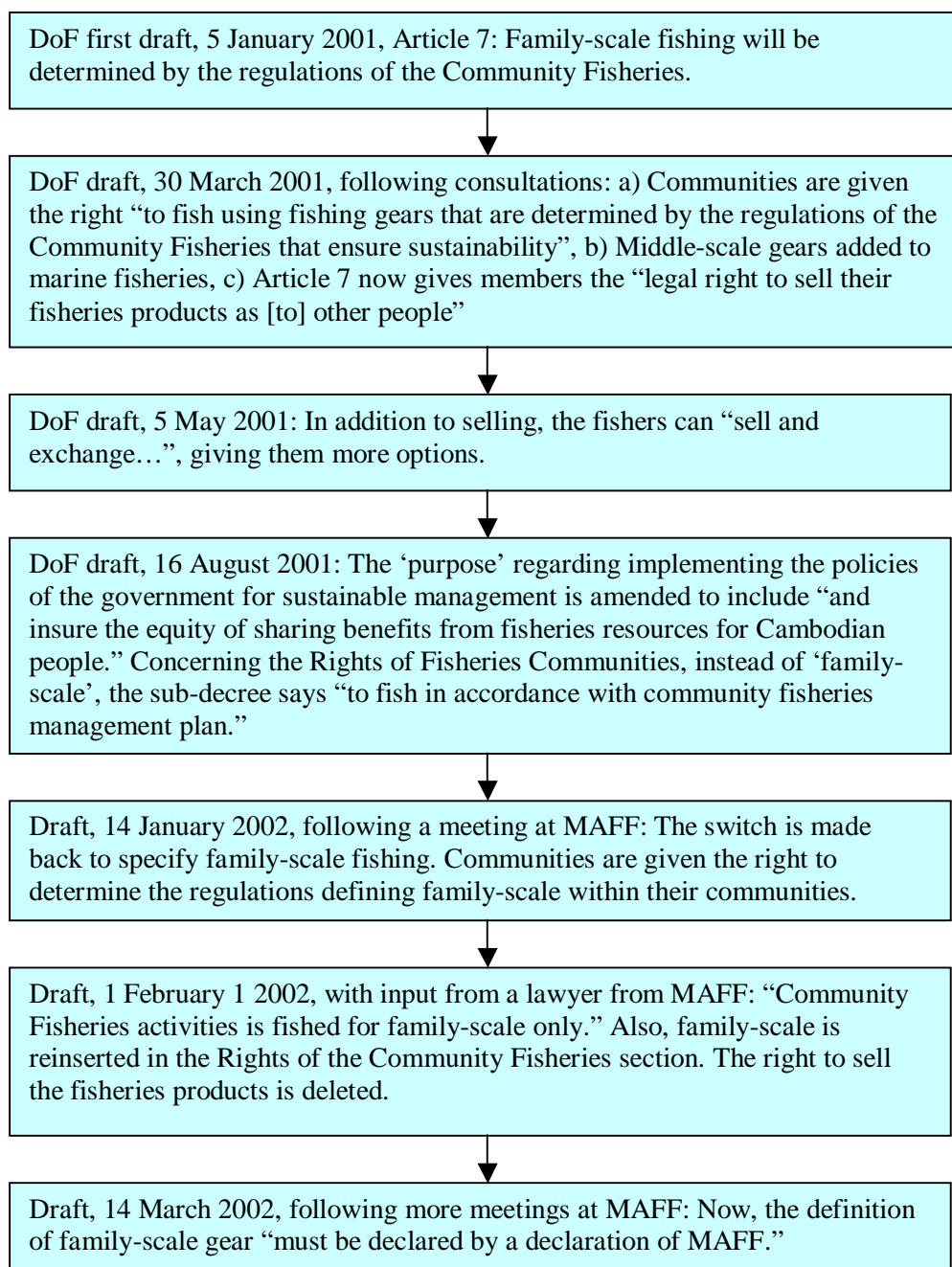


Figure 2 Family-scale Fishing

One of the original objectives of the sub-decree, as spelled out in the initial draft, is to “improve the livelihood of the people of Cambodia.” This was later expanded to stipulate “especially for the poor.” By the final draft, the objective reads, “Improve the livelihoods of the Khmer people and alleviate poverty.” With this in mind, the scale of fishing allowed should obviously be sufficient for the poor people of Cambodia to ensure a decent livelihood.

Again, questions about the meaning of ‘subsistence’ arise. Is it merely consuming what one catches, or also selling the surplus for the purchase of other necessities? This point still requires clarification, since the author was unable to obtain a definitive answer from the DoF. While it appears that current practice does involve fishers selling surplus catch, and the DoF mentions that people will have the right to sell their catch, ambiguity in the current draft sub-decree could lead to disorganization, confusion and potential corruption.

Under the Fiat Law of 1987, people already have the right to fish year-round using family-scale fishing gear, except in those areas that have been set aside as fishing lots or protected areas. If a passed sub-decree stipulates that Community Fisheries are limited to family-scale fishing only, essentially the government is reiterating current legislation, not proscribing new rights or powers to people. Many argue that Community Fisheries will be superfluous if they are limited to family-scale only, as this is what people do already. Why, therefore, bother to undertake the effort to establish community structures if people will be confined to what they are doing already? How will this benefit the community? Furthermore, many people complain that family-scale fishing gears are insufficient to feed their families. This point was repeatedly raised by communities, including during the public consultations and by NGOs.

Some people within government and from NGOs are advocating that fishers should be able to run the Community Fisheries as small-scale enterprises. With any income derived from the sale of fish, not only would the individual benefit, but also some of the money could go towards community development. It is argued that, if community members cannot sell their catch, people’s livelihoods will not improve; hence there will be little impetus to join a Community Fisheries.

On the other hand, the position of the government seems to be that fisheries are a common property resource. Since they are not being taxed and are allowed to fish year-round, family-scale fishers should be limited by gear type and size. Moreover, the DoF worries that if larger gears are allowed, this may impact on the sustainability of the resource, especially if these larger gears are used year-round, including during the spawning season.

The DoF plans to review the ‘family-scale’ fishing gears issue, and will most likely issue a declaration that revises the limits on what gears can be used. However, it is argued that this should be included in the sub-decree, or issued prior to its passage, if the ability of poor people to improve their livelihoods is to be ensured. With the uncertainty of future revisions, many would consider it impulsive to issue a sub-decree without first securing the rights of people to improve their livelihoods through Community Fisheries.

2.4 Illegal Fishing and Enforcement

A second key issue concerns combating illegal fishing (Figure 3). Communities, many NGOs and the DoF believe that Community Fisheries must have the right to stop illegal fishing by detaining those involved or confiscating their fishing gear. If Community Fisheries must instead report the incidence to the authorities, it is argued that the perpetrators will escape before the authorities arrive. In essence, Community Fisheries would be powerless to stop illegal fishing.

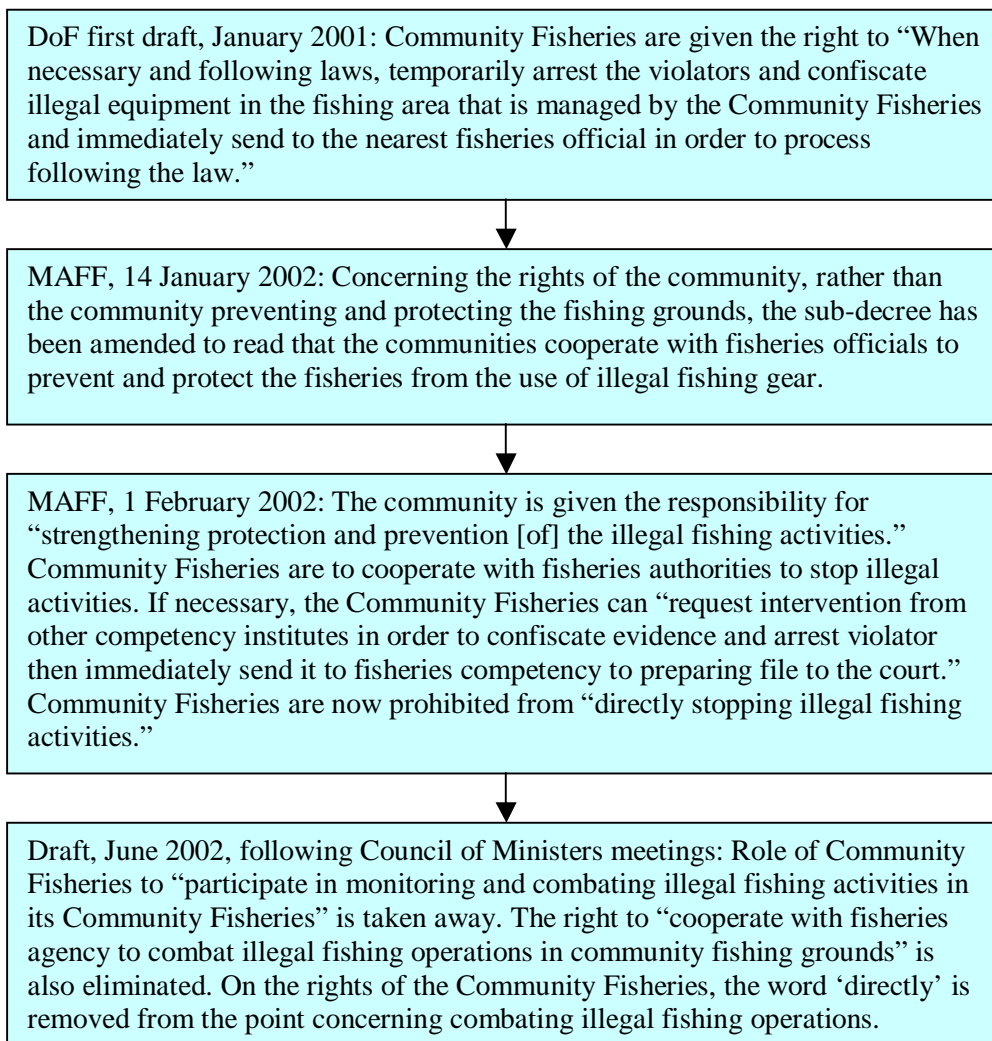


Figure 3 Enforcement of Illegal Fishing

On the other hand, the government, as represented by the Council of Jurists, takes the position that people cannot have the right to enforcement because it is the responsibility of the authorities to arrest or detain illegal fishers. Members of communities should not be authorized to make arrests. Furthermore, in light of the prevalence of weapons and armed guards in the fishing sector, the potential for violent confrontations could be high – one should note that violent confrontations already occur at an alarming rate throughout the Cambodian fisheries sector (FACT, undated). Moreover, as Gum (2000) notes, lot owners are given enforcement rights in Article 18 of Sub-Law No. 26. This law “provides the fishing lot operator with the right to provisionally arrest violators and confiscate evidence of poaching or forest cutting inside the fishing lot. The violator and evidence must be sent to the nearest fisheries office which is responsible for drafting a report.”

Both the DoF and MAFF have stated that they intend to lobby the Council of Ministers to reinsert law enforcement rights into the sub-decree. It should also be emphasized that there is near unanimity among NGOs and community representatives that people need the right to protect their fishing areas. Furthermore, currently-operating Community Fisheries are patrolling and protecting their fishing grounds with some success. If the sub-decree is passed as it is now written, these communities will no longer be able to do this.

2.5 Migrants and Ethnicity

Other key issues revolve around ethnicity and migrating fishers (Figure 4). First, the ethnic dimensions of the sub-decree need to be examined. The text of the sub-decree specifically refers to ‘Khmer’ people, not ‘Cambodian’ people. While officials have assured the author that this is nothing to worry about, there is the potential for discrimination against those groups that are not ‘Khmer’, such as Vietnamese and Cham. As Gum (2000) notes, there is “widespread anti-Vietnamese sentiment” in Cambodia which could open up the possibility of discrimination or corruption unless it is rectified in the language of the sub-decree.

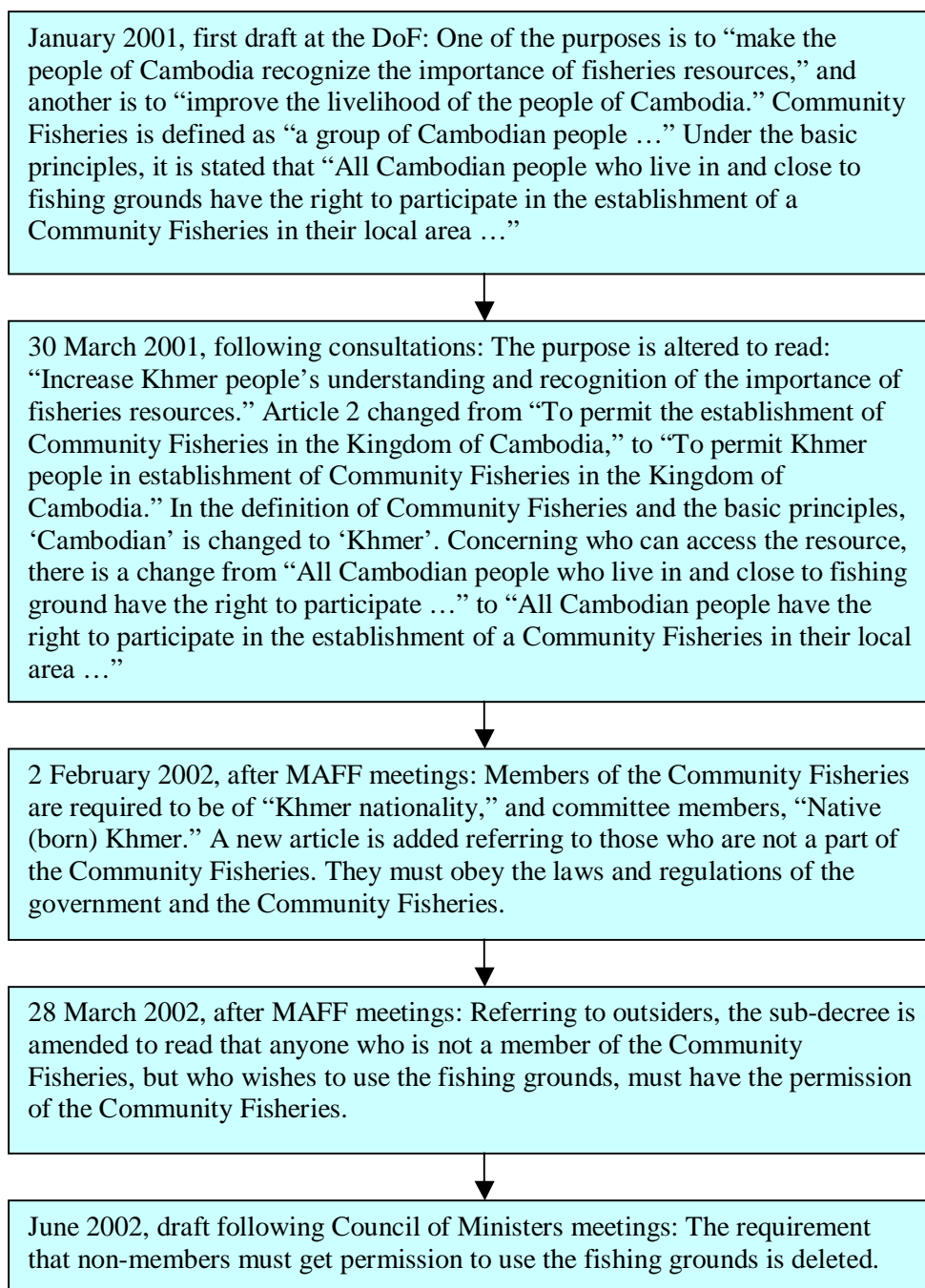


Figure 4 Migrants and Ethnicity

In terms of migrating fishers, it has already been noted that many fishers migrate to fishing areas outside their own community at some time of the year to supplement their livelihood. The original draft of the sub-decree included a broad, but not well-defined, notion of who could participate in the Community Fisheries: “All Cambodian people who live in and close to fishing grounds have the right to participate in the establishment of a Community Fisheries in their local area ...” This language changed as the sub-decree was debated in the DoF and MAFF, with the final version from MAFF stipulating that outsiders had to receive permission from the Community Fisheries to use the fishing grounds.

As the sub-decree currently reads, these outsiders have the right to fish in Community Fisheries areas without having to seek permission from the Community Fisheries. The Council of Ministers’ view is that if permission is required, a potential for corruption will exist. On the other hand, if migrant fishers can fish without having to seek permission, it may undercut the efforts of the Community Fisheries, whose members may have to pay a fee to join and benefit from Community Fisheries.

The MAFF has stated that it intends to lobby the Council of Ministers to ensure “seeking permission” is reinserted into the sub-decree. If this is not mentioned, it is feared that the Community Fisheries may have difficulty managing and protecting the fisheries areas effectively.

The question as to who will be included in the Community Fisheries organization is also unclear. Can migrant fishers join Community Fisheries, given that many of them use the resource year after year and may be interested in working with people who reside in the Community Fisheries area? This needs clarification, as it may especially affect some of the minorities in the country, such as the Vietnamese around the Tonle Sap.

2.6 Status of the Sub-Decree in June 2002

At the time of writing, the DoF holds the sub-decree and is trying to decide how to move forward. The DoF, MAFF and Prime Minister all wish to see fast action on the sub-decree. However, although the prospect for its passage appears somewhat positive, in what form is unclear. Because the draft Fisheries Law is not yet passed, the Council of Ministers is suggesting that either a Royal Decree be issued authorizing the management of Community Fisheries in a sub-decree, or that the sub-decree itself be changed into a Royal Decree. A Royal Decree is signed by the King but does not have to be reviewed by any other deliberative entity. According to legal experts, Royal Decrees are used only for high-level appointments in the government. Nowhere in the Constitution does it allow for them to be used for this kind of purpose.

Interviews with DoF staff revealed that donor countries have suggested the draft sub-decree be opened up to further consultation. However, what this will entail is unclear, especially given that in-depth consultations occurred at the beginning of the drafting process. Some DoF staff also intimated that opening up the consultation process again would exacerbate the problem of finding a coherent and complete draft and that the sub-decree would “never be finished”. On the other hand, other DoF staff welcomed more consultation. They recognized that this is a learning process for everyone involved and were happy to revisit the issue to come up with the best sub-decree possible, one that truly empowers local communities.

3. Summary

The Community Fisheries sub-decree has gone through many changes since its conception over one-and-a-half years ago. The government, NGOs and communities themselves are still learning about the concept of Community Fisheries and how to successfully and legally implement it in Cambodia. As demonstrated by this study, people were given a revolutionary opportunity to shape the Community Fisheries sub-decree by inputting their ideas and thoughts. Following public consultations, the DoF, MAFF and Council of Ministers have written the draft to reflect their views.

Critics contend that those provisions of greatest importance to the empowerment of rural communities have been excluded from the most recent draft. In other words, the voices of people seem to have been silenced. The two main issues associated with the empowerment of rural communities are family-scale fishing and enforcement. If communities are to effectively co-manage this vital natural resource, they must be given the rights and powers to do the job effectively. This means that they must possess the notion of ownership of the Community Fisheries so that they have a genuine stake in protecting and conserving the resource, as well as profiting from the fishing grounds. Without this sense of ownership, rural communities may have little incentive to manage it.

In addition, rural communities must be given the right to earn a decent living from the fisheries resource. They must be given the right to fish for subsistence in the broader sense of the word, with the ability to sell their catch for income. Moreover, they must be allocated the right to patrol and protect the fisheries resource for themselves. People living there have the most at stake, and with guidance from the DoF and NGOs, they are the most appropriate people to protect the resource. Community Fisheries organizations are demonstrating exactly that, and it can succeed on a larger scale if the government provides a more enabling support service.

The issue of ethnicity must also be resolved to guarantee that ethnic minorities, especially Vietnamese living in Cambodia, are not discriminated against. The fisheries resources are for all Cambodians to share in and to protect. By inserting the word 'Khmer' into the sub-decree, the government may polarize the country, opening up the possibility of discrimination or corruption, and creating an atmosphere that will continue to foster animosity towards minority groups. Efforts must be made to include these groups in the management of the fisheries resources, so that they not only benefit from them but also help to conserve and protect them.

As this document demonstrates, some of the changes in the drafts demonstrate division between the government and community representatives on some key issues. There are no simple solutions, but if the purposes of the sub-decree are to manage the fisheries resources, ensure the sharing of benefits, and improve people's livelihoods, these issues must be resolved with the intentions and actions that unequivocally empower local communities to regain control over the resources. As discussed earlier, fisheries are the state's common property. They belong to the people. Government has the role of ensuring that the resources are properly managed, but must recognize that it is the people's resource and that they depend on it for their livelihood.

In terms of radical new rights being conferred on people to lift their communities from poverty, the current version of the sub-decree appears to be lacking. The sub-decree has been written to follow the laws and regulations of Cambodia without adequate thought of social, economic and environmental impacts, or consequences of its passage. It may conform to the laws and Constitution of Cambodia, but it does not yet challenge the current system, nor bring the concept of true reform of the fisheries sector to fruition. The power of people to protect and conserve the resource, while also securing their livelihoods, is the most powerful tool Cambodia has to ensure that the fisheries sector remains viable and beneficial to the livelihoods of millions of Cambodians.

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Appendix A Chronology of Major Changes in the Drafts

Second Draft

The second draft of the sub-decree is dated 15 January 2001. This draft is titled “Final Draft” by the Department of Fisheries. However, this draft is identical to the previous one with only one minor change. In Article 14, regarding defining the role of the local authorities, one of the points is omitted. It reads: “Cooperate in the Management of the Fisheries Communities.” This is the only change in the draft that was then used as the working copy for discussions and consultations. The next draft would reflect more changes and alterations as input was received and incorporated into the sub-decree.

Draft Following Consultations

As mentioned previously, the DoF opened up the process of drafting the sub-decree to public consultations. Meetings were held in various parts of the country to comment on the pending legislation. Also, officials and representatives gathered in Phnom Penh for workshops to discuss the sub-decree, and NGOs had the opportunity to offer their ideas and suggestions. When the consultation process was completed, the CFDO incorporated these ideas into the next draft of the sub-decree. Not everyone was happy with the results, as changes to the sub-decree during the initial consultation process did not seem to have incorporated many of the suggestions from communities or NGOs. However, this is the version that emerged, dated 30 March 2001.

Many of the changes in the sub-decree are simply working on the language to bolster its authority and eliminate ambiguity or uncertainty. Alterations in the text start with *Article 1* concerning the purposes of the sub-decree. The first purpose, to “effectively implement the policies of the Royal Government”, was changed to read “Implement the policies of the Royal Government on effective and sustainable management of fisheries resources.” The second purpose, to “make the people of Cambodia recognize the importance of fisheries resources”, was changed to “Increase Khmer people’s understanding and recognition of the importance of fisheries resources.” Another change was the addition of “especially the poor people” in reference to improving peoples’ livelihoods. Finally, one more purpose was added: “Improve the rights of community fisheries.”

Article 2 on Community Fisheries also incorporates changes from ‘Cambodian’ to ‘Khmer’. Rather than “To permit the establishment of Community Fisheries in the Kingdom of Cambodia,” it now states, “To permit Khmer people in establishment of Community Fisheries in the Kingdom of Cambodia.” There are a few words added to the second part of the article as well, defining the Community Fisheries. ‘Cambodian’ is changed to ‘Khmer’, and the word ‘volunteer’ is added before ‘cooperate’, regarding the establishment of the Community Fisheries. At the end of the definition, another phrase is included: “... and in order to protect rights and benefits of the people.”

In **Chapter 2** on the “Organization, Management and Role of Community Fisheries,” the phrase “in accordance with existing laws” is added to *Article 3* on the management of the Community Fisheries by communities. *Article 4*, discussing the basic principles of Community Fisheries, refines the points in the text. The first point again substitutes ‘Khmer’ for ‘Cambodian’. Next, the text changes from “All Cambodian people who live in and *close to* [emphasis by author] fishing grounds have the right to participate ...”, to “All Cambodian people have the right to participate in the establishment of a Community Fisheries in their local area ...” This version of the draft stipulates that there must be a public meeting before establishing the Community Fisheries to ensure that the process is transparent. Also adding to this article is the concept that Community Fisheries committee members cannot be government employees. In *Article 5* on the roles of the fishers community, one point is added: “Ensure that all community fisheries members have equal right in use of the fisheries resources and encourage the poor.”

The rights of the Community Fisheries are discussed in **Chapter 3**. *Article 7* defines what rights the community has. In the previous draft, the communities were limited to family-scale fishing only. The next draft expands the rights slightly to allow middle-scale fishing in marine fisheries as well. After the expanded use to allow middle-scale fishing gears in the marine environment, the sub-decree then gives the communities the right “To fish using fishing gears that are determined by the regulations of the Community Fisheries that ensure sustainability.” *Article 7* goes on and adds an important component to the rights of the Community Fisheries. The final point gives the Community Fisheries members the “legal right to sell their fisheries products as [to] other people.”

In the next article, the sub-decree adds some important prohibitions. In addition to the prohibitions on selling or renting the fishing grounds, the Community Fisheries do not have the right to “build dam and fish that cause obstruct the passage of the stream, creek, canal and fish migration. In case of need, Community Fisheries can do it for community benefit, but must first do a co-study and (agreement) from fisheries institution in advance.” Methods used to obstruct the waterways may be important to catch the fish before they quickly migrate out of the area. In other words, some water obstructions may benefit the people without causing undue harm to the environment or the sustainability of the fishing stocks. This is an area that the CFDO is investigating further to determine if barrages may in fact be authorized in certain circumstances. The final article of the chapter adds one provision to *Article 10*. It states that “Community Fisheries must not support any political party.”

Concerning the “Responsible Institutions” described in **Chapter 4**, additional responsibilities are accorded to these institutions. *Article 12* states that they help with the boundaries of the Community Fisheries; they “[m]ust assist in preventing violations and resolve fishing disputes; ... must prevent and solve fisheries disputes ... After that give information to Community Fisheries”; and they are to help “find partners for support to Community Fisheries.” The expansion of the responsibilities shows the development of the thoughts about the role of the DoF. They see the need to become more involved in the setting up and management of the Community Fisheries to play a larger role and one that is more specifically defined. These changes complete the draft.

Draft of 5 May 2001

Another draft was produced over the course of the next few weeks to submit to the MAFF. This draft of the sub-decree was subsequently submitted at a meeting on 13 July 2001. The acting Minister of MAFF at the time was Chan Tong Yves. At this time, some of the articles changed numbers, were moved around, or additional articles were inserted. Therefore, the new article numbers will not always correspond with the earlier ones. There are only a few changes from the previous draft. In *Article 5*, regarding the roles of the fishers community, the expanded points about fisheries disputes is shortened to only refer to preventing and solving disputes according to the law. The point concerning serious cases and cooperation with other institutions is deleted.

Another deletion occurs in the next article on the budget for Community Fisheries. One aspect, ‘charity’, is deleted from the sub-decree. Another minor change is the addition of the concept of ‘exchange’ in the article on the rights of the fishers community. In addition to selling fish, now the point is broadened to sell and exchange, giving community members more options to dispose of their catch.

A new section is added to Chapter 4 regarding “Responsible Institutions.” Changing *Article 11* from mentioning that the guidelines for management “must be the responsibility of the Department of Fisheries,” the new article states that “the Ministry of Agriculture, Forestry and Fisheries must be issued declaration on a) the guidelines for management, conservation, development and use of the fisheries resources, b) a sample of Community Fisheries by-laws.” Now, the onus and overall responsibility rests in the Ministry and not the DoF. Moreover, the Ministry has the duty to provide sample by-laws for communities to examine. As noted above, many people perceive that the capacity of communities to engage in this type of organization is low. A great amount of assistance will be

necessary to develop these Community Fisheries. With assistance from the government on the establishment of by-laws for the Community Fisheries, at least the community would have a foundation to formulate their own by-laws. Furthermore, this approach may be useful in instituting some sort of national guidelines for Community Fisheries. One issue not dealt with is the lack of national guidelines to ensure that the management plans not only serve the communities they represent, but also ensure the sustainability of the resource in Cambodia. Unlike other natural resources such as forestry products, fish migrate and depend on water that may be diverted to other uses such as agriculture. For these reasons and others, there is a need to have a uniform standard that would serve to protect all communities and the resource.

There are two other word changes in the article defining the responsibilities of the Fisheries Institute, now called the Fisheries 'competency'. They now have the role of monitoring and approving requests to establish Community Fisheries by Khmer people. In the previous version, the point referred to the roles concerning sustainable management and use of the resource, not the establishment of Community Fisheries. Also, instead of "providing guidelines for the establishment of the statutes, regulations and management plans," the text reads, "facilitate in preparing for the establishment ... " Further down, in the point concerning the prevention of violations and resolving disputes, the word 'must' is deleted, giving the DoF more leeway in determining what involvement they want to have.

Draft Dated 16 August 2001

There is a draft dated 1 June 2001. However, this draft is the same as the one from May. The next draft is then dated 16 August 2001. This is called the "Final Draft DoF and MAFF." In this draft, the DoF and MAFF put together the version of the sub-decree that they feel contains the necessary articles to enact the sub-decree and implement it in the country.

The first thing one notices about this draft is that the preamble is bolstered to include references to all twelve sub-decrees on the "Removal of Fishing Lots and Reduction of Fishing Grounds in Fishing Lots ... for People to Use For Family-Scale Fishing." This was viewed as a necessary reference to empower the sub-decree since the release of these reforms served as the impetus for the establishment of Community Fisheries.

The draft displays many changes from previous drafts. In *Article 1* on the purposes of the sub-decree, a couple of phrases are added to the first two points. In the first, on implementing the policies of the government for sustainable management, the phrase "and insure the equity of sharing benefit from fisheries resources for Cambodian people" is added to the end. The second point adds to "Increase Khmer people's understanding and recognition of the importance of fisheries resources" with "by directly participation in management and protection of fisheries resources." Finally, the last purpose about providing "rights to Community Fisheries" is changed to read "Provide visions to Royal Government of Cambodia for sustainable management of fisheries resources."

Following the "Basic Principles of Community Fisheries," the sub-decree is expanded to include a new section delineating the requirements for the Community Fisheries statutes. The format is in bullet points, with seventeen in total. Among the requirements are the basics, such as the name and location of the community, a list of members and those on the committee, their roles, responsibilities and rights. The DoF also requires information on the budget, the process of conflict resolution, how fishing gear is determined, and the community organizational structure. Now, the DoF is attempting to better define the information necessary for the community to establish and operate a Community Fisheries. While this may seem to be micro-managing, it also does at least provide a framework for communities to begin setting up their structures and by-laws.

The next article on the roles of the fishers community is also expanded. It includes a new first point: "Prepare a Community Fisheries agreement with provincial/municipal fisheries office." The budget article is also edited to include "income from community fishing ground." This is important, as the

DoF is giving the community the right to earn income from the community fishing grounds. A second point concerning grants is expanded. The sub-decree specifies that grants may be from charity, government or international organizations. There is still little fleshing out of what will be realistic funding sources and what percentages or amounts the government is willing to commit to this endeavor.

Taking a look at the next chapter on the rights of the Community Fisheries, there is an important change in the first article about the rights of the Community Fisheries. Instead of referring to family-scale fishing or middle-scale fishing, point a) now reads “To fish accordance with community fisheries management plan.”

There are also additions to **Chapter 4** regarding the “Responsible Institutions”. In *Article 11* on declarations from MAFF, the second point from the previous draft on the conditions and terms of reference is deleted. In its place, three new points are written. First, MAFF must make a declaration on “A sample of statutes and inside rules of community fisheries”, second, “A sample of an agreement between Community Fisheries and provincial/municipal fisheries office”, and third, “Appropriate ground for establishing Community Fisheries follow Community Fisheries proposal through local authorities and fisheries competency.”

Next, parts of the article regarding the fisheries competency are amended. One new responsibility is to train local communities to help build up their capacity to manage the resources, while a second is to monitor, control and evaluate the implementation of the Community Fisheries.

Two new chapters are added to the sub-decree at this time. The first one deals with the “Management plan of community fisheries” and the second with “Process of disputes resolution.” The first new article discusses the community management plan that each community must produce. These plans must include information on the sustainable use of the resource, the fishing gears permitted and when they can be used, how violations will be dealt with, conservation concerns, improving the fisheries domain, budget management, and education and training.

The second article in this chapter gives guidelines for management plans. First, they must be written with respect to the existing sub-decree and other related laws and government policies. Second, a timeframe of one to three years is given for the plans. Third, a paragraph states that the DoF can edit the plan and make it effective without another Community Fisheries conference needed.

The subsequent new chapter stipulates the procedures for dispute resolutions. The community committee has authority to resolve any disputes arising among the community or fishing area. If they are unable to resolve the problem, the case can be sent to the village leader, commune leader or district governor. If the problem still cannot be resolved, then the issue must go to MAFF to comprise a committee to solve the dispute.

Draft Dated 14 January 2002

This draft follows a meeting at MAFF headed by Chun Sareth. The changes made to the sub-decree also reflect the fact that a change was made at the top of MAFF. The sub-decree on Community Fisheries is now entitled the sub-decree on “Community Fisheries Management.” In **Chapter 1**, one new point is added and another is deleted. The first objective now reads: “[to] manage the Removal of Fishing Lots and Reduction of Fishing Grounds for People to Use and Preserved Fishing Areas in Inland Fishery Domains and Marine Fishing Domains.” At the end of the section, the point about providing “visions to Royal Government of Cambodia for sustainable management of fisheries resources” is deleted.

In **Chapter 2**, one of the basic principles of Community Fisheries is deleted: the need to hold a public meeting before establishing the Community Fisheries. Added to the sub-decree, in the section on the

roles of the Community Fisheries, is the point about protecting flooded forests because of their importance as a habitat for fish to ensure the sustainability of this natural resource.

In this version, the switch is made back to specify family-scale fishing again. Communities are given the right to determine regulations defining family-scale fishing within their community. This applies to inland fisheries, with the marine fisheries being given the right to use family-scale or middle-scale gears. Also, within the rights of the community, the word ‘preventing’ is deleted from the point regarding fisheries disputes. It now reads to solve the disputes according to the statutes. Rather than the community being given authority to prevent and protect the fishing grounds, the sub-decree is amended to read that the communities cooperate with fisheries officials to prevent and protect the fisheries from the use of illegal fishing gear.

Concerning the chapter on resolution of disputes, the text is changed in the case of an irresolvable dispute to be sent not to the village leader or commune chief, but to an official institution.

Draft of 1 February 2002

The ‘purposes’ of the sub-decree have now become the ‘objectives’. Additional articles are inserted in **Chapter 1**. A brief article emphasizes that the fisheries resources are public property. In other words, these resources belong to the state as common property for the people of Cambodia. It reads “Community fishing ground is *the state* [emphasis in original] public property.” This concept has ramifications for what the community can do with fishing areas because they belong to the state, not the community. The community simply has the right to help manage the resources, not control them. When questions arise as to what gears to use, or what one can do with the catch, the community is limited by this concept and may be unable to dispose of the grounds or the catch as they may desire. On the other hand, it should be pointed out that the state’s common property is, in essence, the property of the people.

Further down, another one-sentence article is added, emphasizing the type of fishing allowed for the communities. This new *Article 6* states “Community Fisheries activities is fished for family-scale only.” After consultations in the Ministry, the decision is made to highlight the fact that the communities will be limited to family-scale fishing gear. Thus, there can be no ambiguity, and one can infer that by placing this article in the “General Provisions,” the government wants to make it clear that this is the only scale that they will allow.

The sub-decree then adds a chapter on the “Community Fisheries Committee.” A series of articles spells out the requirements and duties of committee members. In this chapter, the government has decided to set guidelines to facilitate the organization of the committee. This chapter will see a lot of changes in later drafts. The first article simply states that each community must have a committee which is selected by an election (second article). The committee is given a 3-5 year mandate in the next article, followed by an article stipulating that the committee will have 7-11 members. In addition to these members, there will be one more appointed as the MAFF representative and one appointed to represent the commune councils or local authority. Neither of these two appointed members can be involved in decisions of the committee.

Importantly, another article is added that gives requirements for members of the Community Fisheries. First, the individual must be a permanent resident in the villages covered by the Community Fisheries. Second, the individual must be of “Khmer nationality.” Finally, the individual must be at least 18 years old. To be a candidate for the committee, one must be a member of the Community Fisheries, “Native (born) Khmer” nationality, able to read and write the Khmer language, and at least 25 years old. Of those running in the election, the person who gets the most votes, according to the next article, becomes the chair of the committee. The vice-chair is the one who receives the second highest number of votes.

The chapter on Community Fisheries is reorganized and changed significantly. Left out of the draft are sections relating to the “basic principles of Community Fisheries” and one detailing what must be included in the Community Fisheries plan. The first article in the new draft deals with the roles and responsibilities of the Community Fisheries. Several new points are added relating to the care of the resources. These give the community the responsibility to protect the inundated forests, care for the environment, and for “strengthening protection and prevention [of] the illegal fishing activities.” In this article, there is no mention of the role or responsibility of the community in dealing with disputes.

On the issue of the rights of Community Fisheries, much remains the same. In addition, the idea of being limited to family-scale fishing is reinserted into this section. Regarding illegal fishing, the draft adds that the Community Fisheries is to cooperate with the fisheries authorities to stop illegal activities. If necessary, the Community Fisheries can “request intervention from other competency institutes in order to confiscate evidences and arrest violator then immediately send it to fisheries competency to preparing file to the court.” Moreover, there is an important omission from this section. The right to sell fisheries products is no longer in the draft.

The new version of the sub-decree inserts another article here, *Article 19*, to instruct about people who are not part of the Community Fisheries. This article states that these people, if they want to use the resources within the community fishing area, must obey the laws and regulations of the government and the Community Fisheries.

The draft then expands on the article concerning what rights are prohibited. In addition to the prohibition on selling, renting and so forth, the fishing area, and building dams and other points, new points are described. The Community Fisheries are prohibited from signing any agreement with people or groups, even if for scientific research. They cannot borrow from any persons or groups, and most important, they are prohibited from “directly stopping illegal fishing activity.”

Yet another chapter is added to the current draft. This one is entitled “Monitoring, Evaluation and Intervention.” There are two articles here, one describing what monitoring, evaluation and intervention include, and the other stating that MAFF “must determine legal strategies for monitoring general activities of Community Fisheries.” This is a good example of how the legal views of MAFF have entered into the drafting process, making the sub-decree more technical and based on legal principles.

Regarding the responsible institutions, it is no surprise that this draft, after examination by MAFF, gives the Ministry much more responsibility and authority. An article detailing these rights begins the chapter. The MAFF is given the following rights, among others: “to be the protectorate (parents) of community fisheries; to intervene, in case of community fisheries did activities against law and regulation; and to issue all guidelines on the management of Community Fisheries.” Some of the other duties involve basic monitoring of the Community Fisheries and to look for donors to help struggling communities.

Two entire chapters are eliminated from the sub-decree: “Agreement Between the Community Fisheries and the Fisheries Competency” and “Management Plan of Community Fisheries.” The first eliminated chapter discussed the specifics of the agreement to establish the Community Fisheries and how it is handled through the process of approval. The second chapter dealt with the content of the management plan and how it was to be promulgated.

These are the changes through this version of the sub-decree. The next draft is dated 5 March 2002 and was used as a working draft for a meeting within MAFF. This draft is the same as the one dated 1 February 2002. No changes had been made to the text before this meeting in the ministry.

Draft Dated 14 March 2002

This draft was written subsequent to the meeting at MAFF. Again, the issue of family-scale is brought up. An important alteration in the sub-decree conferring the rights to the Community Fisheries now stipulates that the definition of family-scale fishing gear “must be determined by a declaration of MAFF.” In a change of great importance, the communities no longer have the right to determine these classifications relative to their situations and needs. The MAFF is appropriating the responsibility of this classification.

In the chapter on the responsible institutions, MAFF is given one more right, the right to issue a declaration on shared access areas in cases where communities might share the same fishing ground. This action is ostensibly to prevent conflicts by having an official arbiter decide on what is fair and equitable. In the next article, the fisheries competency is given the responsibility of assisting the Ministry in this aspect by monitoring the situation and providing advice concerning shared access to the fishing grounds.

Draft Dated 21 March 2002

This draft incorporates the changes made at the previous meeting at the MAFF. For the meeting on 21 March 2002, the third meeting of this group, the work is delegated to Secretary of State Chan Tong Yves to oversee.

Examining **Chapter 1**, a new article is added declaring that the Community Fisheries’ boundaries must be determined by a declaration from MAFF. The second chapter is retitled to “Leadership and Management of Community Fisheries Committee,” adding “leadership and management.” Within this chapter, the requirement that members of the committee be at least 25 years old has been deleted.

MAFF is again the focus of the chapter on responsible institutions. Here, the Ministry is given the right to intervene in situations in which Community Fisheries activities violate other laws or regulations. MAFF is essentially giving themselves the legal right to intervene when they view Community Fisheries activities as detrimental to the environment or sustainability of the fisheries resource. The Ministry could intervene at their own discretion.

Draft Dated 25 March 2002

Following the last meeting at the Ministry, another draft is produced to reflect the current thoughts on the sub-decree. Dated 25 March 2002, this draft contains only a couple of prominent changes from the previous one.

The first alteration is simply reverting back to the **Chapter 2** title “Community Fisheries Committee,” deleting “Leadership and Management of.” Also deleted from this chapter is the requirement that members of the committee be able to read and write Khmer. This change allows for potentially broader representation on the committee, especially by those who may be the most disadvantaged or lacking education.

Under the duties of fisheries agencies, one more point is added directing agencies to issue guidelines about Community Fisheries committee elections.

Draft Dated 28 March 2002

The final draft to emerge from these meetings with the MAFF is dated 28 March 2002. Changes were made to the article defining the roles and duties of Community Fisheries. First, one point is deleted which referred to the management of the fisheries resource according to the Community Fisheries by-laws, the management plan, and other regulations related to the fisheries sector. In two places in *Article 12* on these roles and responsibilities, the word ‘participate’ is added. Now communities are only participating in these activities with the help of other bodies. The first one concerns the idea of conservation and protection of inundated forests, and the second, the idea of monitoring and combating illegal fishing activities. Another important concept is inserted at this point: the notion of protecting and replanting the flooded forests.

Regarding outside users of fishing grounds, *Article 14* is amended to read that anyone who is not a member of the Community Fisheries, but who wishes to use the fishing grounds, must have the permission of the Community Fisheries. This is fairly significant since there are many people within the community and without who may want access to the fishing grounds, but who are not members of the Community Fisheries.

Council of Ministers Version

The first major revision recommended by the Council of Ministers entails the deletion of the requirement that people who are not members of the Community Fisheries must get permission from the committee of the Community Fisheries to use the community fishing grounds.

Importantly, the role of the Community Fisheries to “participate in monitoring and combating illegal fishing activities in its Community Fisheries” is taken away from the community. Likewise in *Article 13*, the right to “cooperate with fisheries agency to combat illegal fishing operations in community fishing grounds” is also eliminated.

In *Article 15* on the rights of Community Fisheries, the word ‘directly’ is removed from the point concerning combating illegal fishing operations. Here, the Council of Ministers has determined that the Community Fisheries does not have the power or the right to halt illegal activities directly. The government’s view is that this is the purview of the authorities.

Appendix B List of Interviewees

1. Nao Thuok, Director General, Department of Fisheries, 1 August 2002
2. Sam Nuov, Deputy Director, Department of Fisheries, 5 August 2002
3. Thay Somony, Acting Chief of Community Fisheries Development Office, 25 July 2002
4. Ly Vuthy, Former Chief of Community Fisheries Development Office, 5, 8 and 20 July 2002
5. Touch Seang Tana, Undersecretary of State, Member of Economic, Social, Culture Observation Unit, Cabinet of Council of Ministers, 24 July 2002
6. Peter Degen, Socio-economist and Technical Advisor, Cambodian Capture Fisheries Component, Mekong River Commission, Department of Fisheries, 17 July 2002
7. Sem Viryak, Communications Hub Manager, Support to Regional Aquatic Resources Management (STREAM), 25 July 2002
8. Mak Sithirith, Coordinator, Fisheries Action Coalition Team (FACT), 10 July 2002
9. Ngim Navirak, Programme Officer, Cambodia Livelihood Study Project, Oxfam GB, 10 July 2002
10. Sim Bunthoeun, Program Database Officer, Oxfam America, 22 July 2002
11. Bruce McKenney, Programme Manager, Natural Resources and Environment, Cambodia Development Resource Institute (CDRI), 17 July 2002
12. Chris Price, Rural Livelihoods Advisor, Department for International Development (DFID), 31 July 2002
13. Ouk Vandeth, Legal Vice-Director, Legal Aid of Cambodia, 2 August 2002
14. Heidi Lichtevelde, Legal Consultant, Legal Aid of Cambodia, 2 August 2002
15. Bradley Pettitt, Tonle Sap Program Development Facilitator, Oxfam America, 22 July 2002
16. Matt Fox, CFDO, 23 July 2002
17. Michael Lerner, Researcher and Lawyer, Governance and Water Resources, Oxfam America, 22 July 2002
18. Pech Bunna, Vice-Chief, CFDO, 25 July 2002
19. Representative of the Legal and Agricultural Department of the Ministry of Agriculture, Forestry, and Fisheries (MAFF), 27 August 2002

Appendix C Primary Documents Consulted

Sub-Decree Drafts in English

1. Version 1, DoF first draft
2. Version 2
3. Draft for comment – 02.01.2001
4. Draft based on DoF 04.01.2001 and following meeting at DoF on 12.02.2001
5. Final Draft Department of Fisheries 05.01.2001
6. Final Draft Department of Fisheries 15.01.2001
7. Final Draft DoF and NGO/communities 30.03.2001
8. Final Draft DoF and MAFF 25.05.2001
9. Final Draft DoF and NGO/communities 01.06.2001
10. Final Draft DoF and MAFF 16.08.2001
11. Draft date 01.02.02
12. MAFF 04.04.02
13. Draft 30 May 02

Sub-Decree Drafts in Khmer

1. 13/11/2001
2. 21/12/2001
3. 14/01/2002
4. 01/02/2002
5. 11/02/2002
6. 05/03/2002
7. 14/03/2002
8. 21/03/2002
9. 25/03/2002
10. 28/03/2002
11. 06/2002

Other Documents

- The Department of Fisheries, “The Draft Fisheries Law,” dated 18 May 2001
- “Process of Public Consultation on the Draft Sub-Decree on Community Fisheries”
- “National Workshop on Fisheries Management in Cambodia”, Phnom Penh, 5-6 December 2000
- “Resolution of Conflict in Fishing Lots: Guidelines for DoF Fieldwork Teams”
- “Minutes: Working Group Meeting on ‘Community Fisheries Sub-Decree’ in the DoF,” dated 12 February 2001
- “Public Consultation on the Sub-Decree of Community Fisheries, Annex 1”
- “Consolidated Comments on the Draft Community Fisheries Sub-Decree,” dated 5 January 2001
- “Comments from the Coastal Zone Re: Fisheries Sub-Decree, Sihanoukville, 19 February 2001”
- “Agenda: Information and Planning Meeting on Issues Related to Sub-Decree on ‘Community Fisheries,’” dated 2 March 2001
- “Questions for Use in Consultation on Community Fisheries Sub-Decree”